

Law Offices of Ezra Spilke

1825 Foster Avenue, Suite 1K
Brooklyn, New York 11230
t: (718) 783-3682
e: ezra@spilkelaw.com
www.spilkelaw.com

January 31, 2019

BY ECF

Hon. Analisa Torres
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *United States v. Jose Segura-Genao*, No. 18-CR-219-AT

Dear Judge Torres:

I write in further support of Mr. Segura-Genao's letter motion to address the inhumane conditions Mr. Segura-Genao is experiencing at the MDC – Brooklyn.

Minutes after filing today's letter motion, I received the enclosed affidavit from the Federal Defenders filed in the case of *United States v. Dino Sanchez*, No. 19-CR-14-AMD (E.D.N.Y.). Mr. Sanchez, who, like Mr. Segura-Genao, is detained at the MDC. The affidavit, sworn by Mr. Sanchez's lawyer Ben Yaster, provides further details about the current conditions at the MDC.

I have written letter motions similar to the one I filed in this case to Judge Ramos, Judge Daniels and Judge Failla. *United States v. Ashirova*, 18-CR-509-GBD; *United States v. Almaleh*, 17-CR-25-ER; *United States v. Rodriguez*, 17-CR-449-KPF. Judge Failla's chambers notified me that she and other judges in the District are working together to address the problems.

Respectfully submitted,

/s/ Ezra Spilke

Ezra Spilke
1825 Foster Avenue, Suite 1K
Brooklyn, New York 11230
(718) 783-3682

Counsel for Jose Segura-Genao

Cc: All counsel of record by ECF

As this Court is aware, Mr. Sanchez suffers from chronic asthma. Additionally, he has an enlarged heart and is diabetic. The current conditions are exacerbating his health problems. Thus, Mr. Sanchez has had trouble breathing the cold, stagnant air and is experiencing fits of coughing and wheezing. Mr. Sanchez has had to use his asthma inhaler repeatedly, despite the warning label's admonition that it be use no more than twice a day. And Mr. Sanchez is experiencing chest pains and lightheadedness. Before the power outage, Mr. Sanchez already suffered one asthma attack and fainting spell. Despite knowing about Mr. Sanchez's condition, MDC has taken no steps to provide him an oxygen mask, clothing, blankets, or access to a habitable location that will mitigate his health risks. Rather, the jail has left him in the same conditions, where he is likely to have another episode — potentially at night, when his housing unit is dark and attending officers may be unable to see and respond to him.

Besides triggering and complicating his medical problems, the MDC's current conditions have substantially interfered with Mr. Sanchez's ability to meet with his attorneys. Legal visitation has been cancelled every day since January 27 — typically, at the last minute, with little notice to attorneys planning to visit their clients, and in violation of the Sixth Amendment and the Bureau of Prisons' own regulations. *See* 28 C.F.R. § 551.117(a). Nor has the MDC been able to tell our office when we can next expect to be able to see Mr. Sanchez. Indeed, the only reason Mr. Sanchez is able to put forward this motion today is by sheer luck that he was produced for a court hearing on January 29, and was able to reach our office for a brief 15-minute call while he was temporarily allowed out of his cell this afternoon.

Collectively, these conditions merit relief. Because the MDC's current conditions imperil Mr. Sanchez's health and interfere with his ability to meet with counsel, this Court should release Mr. Sanchez under the Bail Reform Act, pursuant to the substantial bail package that Mr. Sanchez previously advanced, at least temporarily until the jail has resolved these problems. *See* 18 U.S.C. § 3142(i) (permitting judicial officer to order "temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason"). In the alternative, the Court should enjoin the Bureau of Prisons to release Mr. Sanchez, transfer him to another facility, or otherwise take ameliorative measures to protect his rights to due process and the effective assistance of counsel. *See generally* *Caiozzo v. Koreman*, 581 F.3d 63, 71-72 (2d Cir. 2009) (pretrial detainee's due process rights are violated where jail disregards risk of harm to inmate of which it is aware); *Benjamin v. Fraser*, 343 F.3d 35, 52 (2d Cir. 2003) (affirming finding that inadequate ventilation, lighting, and exposure to extremes of temperature violated pretrial detainees' constitutional rights); *Benjamin v. Fraser*, 264 F.3d 175, 185-87 (2d Cir. 2001) (affirming finding that jails' obstruction of attorney visitation denied pretrial detainees' right to counsel).

Thank you in advance for your consideration of this emergency motion.

Respectfully submitted,

/s/ Benjamin Yaster
Benjamin Yaster, AFD
Federal Defenders of New York, Inc.
Tel: (718) 330-1291
Fax: (718) 855-0760
Benjamin_Yaster@fd.org

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA :

-against- :

DINO SANCHEZ :

Defendant. : 19-cr-14 (AMD)

-----X

ATTORNEY AFFIDAVIT

My name is Benjamin Yaster and I am an Assistant Federal Defender at the Federal Defenders of New York, Eastern District. I declare under penalty of perjury that my client, Dino Sanchez, related the following facts to me today, January 31, 2019, and on January 29, 2019:

1. Mr. Sanchez was arrested and arraigned on January 16, 2019. He was detained following the arraignment and, since that date, has been housed at the Metropolitan Detention Center (MDC) in Brooklyn, New York. He is currently housed on Unit 22 on the seventh floor.
2. Mr. Sanchez suffers from chronic asthma. Before his arrest, he treated his condition with an oxygen mask and an asthma inhaler, both of which he used daily. He also has an enlarged heart and is pre-diabetic.
3. While detained at the MDC, Mr. Sanchez has been denied any access to an oxygen mask for his condition. Further, until January 30, 2019, he has had to rely on the two asthma inhalers that were in his possession when he was arrested.
4. The conditions at the MDC have exacerbated Mr. Sanchez's asthma. On January 17, 2019, the day after his arrest, Mr. Sanchez was placed in the Segregated Housing Unit (SHU) for reasons that were never explained to him. Mr. Sanchez had an asthma attack that day. He used his inhaler to calm the attack, but his chest then began to hurt badly, his heart pounded, and he felt lightheaded. Mr. Sanchez fainted and was brought to the medical unit for treatment. There, he told the medical staff about his asthma history and need to use an oxygen mask in addition to an inhaler. The medical staff did not provide

- 2

and his breathing problems, he has needed to use the inhaler repeatedly. Mr. Sanchez has never been offered an oxygen mask.

12. Since January 27, 2019, Mr. Sanchez has had no access to email, social visits, or social phone calls. The only people he has been able to contact is my office, on the jail's legal phone line, for brief phone calls when he has been temporarily released from his cell.
13. Since January 27, 2019, I have been unable to visit Mr. Sanchez at the MDC because all legal visitation has been cancelled. I have only been able to speak with Mr. Sanchez before and after court on January 29, and today when he was able to briefly reach me by phone.
14. I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 31, 2019
Brooklyn, New York

/s/ Benjamin Yaster